

Application of the *Government Sector Finance Act 2018* to State Owned Corporations

Last updated 25/03/2019

The *Government Sector Finance Act 2018* (GSF Act) applies to State Owned Corporations (SOCs) and is proposed to commence in several phases. You may find the GSF Act commencement timetable on the [website](#).

The GSF Act replaces four financial management Acts used by SOCs with a single Act:

- *Public Finance and Audit Act 1983*
- *Public Authorities (Financial Arrangements) Act 1987*
- *Annual Reports (Departments) Act 1985*, and
- *Annual Reports (Statutory Bodies) Act 1984*.

The following table details relevant information for SOCs related to provisions of the GSF Act which commenced from 1 December 2018 and any relevant Treasurer’s Directions, together with information on the payment of tax-equivalents and financial distributions to the Treasurer (commencing 1 July 2019).

Provision	Previous Provisions	Treasurer’s Direction (if any)	Implication for SOCs
Part 1 (Preliminary)			
Part 2 (Key concepts)	PFAA Sec 4 ARSB Sec 3 ARD Sec 3 PAFA Sec 3		<ul style="list-style-type: none"> • SOCs are GSF Agencies for the purposes of the Act: section 2.4(1)(h). • The responsible Minister for statutory SOCs is the voting shareholders of the corporation under the SOC Act: section 2.6(d). • The accountable authority for a SOC is: <ul style="list-style-type: none"> ○ if the agency has a governing body – the governing body (the Board: section 1.4), or ○ if the agency does not have a governing body – the head of the agency: section 2.7(2)(i). • SOC employees are ‘government officers’ for the purposes of the Act: section 2.9(1)(a)-(e). • Subject to any determination of the Treasurer, the annual reporting period for a GSF agency is: (a) the period of 12 months commencing on 1 July in any year, or (b) if a different period is specified as the agency’s financial year by its constituent Act – that specified period: section 2.10.

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Part 3 (Roles and responsibilities)			
<ul style="list-style-type: none"> Sec 3.1 (Giving of Treasurer's Directions) 	PFAA Sec 9		<ul style="list-style-type: none"> Treasurer's Directions (TDs) may be issued on a broad range of issues, however, it is not intended that they will apply more broadly than they already do. Any previous TDs will only apply to SOCs if they applied previously.
<ul style="list-style-type: none"> Sec 3.2 (Basic content of Treasurer's directions) 	PFAA Sec 9		
<ul style="list-style-type: none"> Sec 3.3 (Application of Treasurer's directions) 	PFAA Sec 9		
<ul style="list-style-type: none"> Sec 3.4 (Duty to comply with Treasurer's directions) 	PFAA Sec 62 (criminal sanction)		<ul style="list-style-type: none"> SOCs will be required to comply with Treasurer's Directions, except if the Direction notes otherwise (e.g. where the TD applies to GSF agencies within the General Government Sector only).
<ul style="list-style-type: none"> Sec 3.5 (Consultation about certain proposed regulations, directions and determinations) 	New provision		<ul style="list-style-type: none"> There is no longer a statutory requirement to consult with SOCs before issuing a Direction (unless a Direction relates to a consultation provision). However, the intention is for SOCs to continue to be consulted with in the same way as they are now.
<ul style="list-style-type: none"> Sec 3.6 (Policies and procedures for financial management of GSF agencies) 	PFAA Sec 11		<ul style="list-style-type: none"> It is most likely that SOCs existing financial management policies, frameworks and systems will be enough to meet the requirements.
<ul style="list-style-type: none"> Sec 3.7 (Values and associated principles to guide government officers) 	New provision		<ul style="list-style-type: none"> Government Officers of SOCs should be guided by the following values and associated principles when exercising functions in connection with financial management: <ul style="list-style-type: none"> Accountability Integrity Transparency. It is likely these values are covered by SOC codes of conduct.
Part 5, Division 5.1 (Expenditure)			
<ul style="list-style-type: none"> Sec 5.1 (Budget Control authorities) 	PFAA Sec 10		<ul style="list-style-type: none"> The Treasurer may issue Budget control authorities to regulate expenditure of money by GSF agencies that are part of the General Government Sector. This does not include SOCs: <u>section 5.1(1)</u>. <u>Section 5.2(1)</u> refers to expenditure of money out of the Consolidated Fund and does not apply to SOCs.
<ul style="list-style-type: none"> Sec 5.2 (Delegation of Minister's appropriation expenditure functions may limit amount and purposes of expenditure) 	<i>Interpretation Act 1987</i> Sec 49		
<ul style="list-style-type: none"> Sec 5.3 (Payment of tax-equivalents to Treasurer) (1 July 2019) 	PFAA Sec 58A-E	New TD in development to replace the current policy	<ul style="list-style-type: none"> The GSF Act retains the current arrangements for the payment of tax-equivalents. Application of the tax-equivalents regime to SOCs is being reviewed, however is not expected to change. A new Treasurer's Direction will replace <i>TPP 03-04 Tax-Equivalent Regime for Government Businesses</i>.

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<ul style="list-style-type: none"> Sec 5.4 (Payment of Financial distributions to Treasurer) (1 July 2019) 	PFAA Sec 59B	Updated Financial Distributions Policy (replacing TPP16-04) in development	<ul style="list-style-type: none"> The new Framework refers to 'financial distribution payments' rather than 'dividend payments' to better align with the broad nature of these types of payments, which are not restricted to returns on equity. New provisions automatically capture statutory bodies including SOCs. Treasurer's Directions may be issued to SOCs in relation to these payments under the new GSF Act provision. However, it is unlikely that this direction power will be used with the current SCI/SBI process to remain the process for agreement and collection of distributions. <ul style="list-style-type: none"> Under the section, prior to making such a <i>direction</i>, the Treasurer (or representatives from Treasury) must consult with the Accountable Authority and responsible Minister of the SOC. The new provision will replace the current section 59B of the PFAA, and therefore is not expected to change the way financial distributions are agreed or collected. Section 20S of the SOC Act will continue to operate as it does currently.
<ul style="list-style-type: none"> Sec 5.5 (Expenditure of Accountable Authorities and government officers must be authorised) 	PFAA Sec 12 PFAA Sec 12A PFAA Sec 13		<ul style="list-style-type: none"> Accountable authorities and government officers must ensure that expenditure of all money is in a way that is authorised. In the case of SOCs, where current processes for approving/authorising expenditure and payments are legal, they will continue to be legal.
Part 6 (Financial Services and Arrangements)	PFAA various	TD18-XX (Draft): Financial Services – applies to all GSF agencies to which the financial services provisions of Part 6 apply, including SOCs.	<p>Financial Services</p> <ul style="list-style-type: none"> State financial services agreement: The Treasurer's Direction is intended to apply to all GSF agencies. The Policy team is in the process of deciding the approach on how to transition SOCs to the new agreement. The Treasurer may issue Treasurer's Directions on: <ul style="list-style-type: none"> the use of banking services and any other financial services under a State financial service agreement requiring, authorising or permitting a GSF agency holding trust money to use a banking or other financial service under the State financial services agreement concerning requirements for opening, closing, or operating banking accounts of an agency and other areas. <p>Financial Arrangements</p> <ul style="list-style-type: none"> A broader and clearer definition of 'financial arrangements' than under PAFA, with corresponding transactions/facilities listed in Treasurer's Directions. Under transitional provisions, any approval for a financial arrangement given under a provision of the PAFA continues in force as a financial

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	<p data-bbox="770 960 922 986">PAFA Sec 22A</p> <p data-bbox="770 1257 936 1311">PAFA Sec 22AA PAFA Sec 22B</p>		<p data-bbox="1317 140 2065 204">arrangement approval under the GSF Act (and may be amended and revoked accordingly):</p> <ul style="list-style-type: none"> <li data-bbox="1317 210 2123 268">○ for a joint financing arrangement or joint venture arrangement - until the arrangement ends, or <li data-bbox="1317 274 2101 331">○ for any other financial arrangement – for a period of 3 years after 1 December 2018 (unless the arrangement ends sooner). <ul style="list-style-type: none"> <li data-bbox="1272 338 2110 434">● Under transitional provisions, any guarantees provided (or taken to have been provided) by or under the PAFA in relation to those financial arrangements continue to be in force until they end. <li data-bbox="1272 440 2110 536">● Should introduce streamlined and standardised approval processes for financial arrangements, providing flexibility for risk-based approvals and delegation processes. <li data-bbox="1272 542 2123 695">● The Treasurer may issue Treasurer's Directions on: <ul style="list-style-type: none"> <li data-bbox="1317 568 2123 632">○ fees payable by GSF agencies for guarantees provided by or under the Act in respect of their obligations under financial arrangements <li data-bbox="1317 638 1527 695">○ fund managers and other areas. <li data-bbox="1272 702 2065 759">● Treasurer has the power to enter into financial arrangements for the whole of government or specified government entities. <li data-bbox="1272 766 2123 861">● Under the GSF Act, SOCs approvals to borrow and invest are not expected to change, though SOCs will benefit from the simplified and streamlined processes to obtain and update their approvals. <li data-bbox="1272 868 2123 963">● Retain the automatic statutory guarantee for approved borrowings for non-Crown entities (PAFA s22A) but provide a mechanism for exclusion of an entity type (or arrangement type). <li data-bbox="1272 970 2110 1123">● Borrowings from TCorp will be automatically guaranteed, removing the requirement under section 20U of the SOC Act to guarantee in writing by the voting shareholders and the board of the SOC. All other guarantees must comply with the guarantee provisions under the GSF Act and the SOC Act. <li data-bbox="1272 1129 2123 1283">● Unless obtained from TCorp, the mandatory statutory guarantee of certain borrowings repayments does not extend to borrowings obtained for a SOC, except to the extent that the board of the SOC and its voting shareholders agree in writing in accordance with section 16 or 20U of the SOC Act: section 6.26(3). <li data-bbox="1272 1289 2123 1417">● Combine the current PAFA provisions regarding statutory performance guarantees (PAFA s22AA) and discretionary guarantees (PAFA s22B) into a single provision where guarantees may be given at the Treasurer's discretion.

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Part 8 (Performance information)		TD18-XX (Draft): Performance information to enable resource allocation decisions – <i>Does not apply to SOCs.</i>	<ul style="list-style-type: none"> The Act applies to SOCs. The current proposed Treasurer's Direction does not apply to SOCs. The GSF Act makes clear that the Accountable Authority is responsible for keeping records that properly explain the government entity's performance. No expected impact for SOCs as SOCs already successfully manage their performance and keep performance information.
<ul style="list-style-type: none"> Sec 8.1 (Application of Part) 	PFAA Pt 3 Div 2A		<ul style="list-style-type: none"> Applies to GSF agencies unless otherwise exempt by regulations.
<ul style="list-style-type: none"> Sec 8.2 (Performance information of GSF agencies) 	New provision		<ul style="list-style-type: none"> The Treasurer may make Treasurer's Directions about what performance information GSF Agencies must keep. The current proposed Treasurer's Direction does not apply to SOCs. If the Treasurer wished to issue a TD about this that applied to SOCs, the Treasurer is required to consult the SOCs' responsible Ministers.
Part 9 (Administration and enforcement)	New provisions		
<ul style="list-style-type: none"> Sec 9.1 (Application of Part) Sec 9.2 (Treasurer may access certain information about GSF agencies) 			<ul style="list-style-type: none"> Applies to GSF agencies unless otherwise exempt by regulations. Treasurer may access relevant agency information about a GSF agency, including SOCs. However, it is unlikely that this GSF Act provision would be used in relation to SOC information, given the powers conferred on the voting shareholders and Portfolio Minister at section 29 of the SOC Act.
<ul style="list-style-type: none"> Sec 9.3 (Minister may request relevant information about funded GSF agencies) 			<ul style="list-style-type: none"> Ministers may access relevant agency information about a GSF agency, including SOCs. Under GSF, the Ministers' powers to access information only apply to: <ul style="list-style-type: none"> Agencies that receive an appropriation or funding for the Minister (which does not apply to SOCs) Agencies for which the Minister is a responsible Minister (the shareholding Ministers can already access information from the SOCs as shareholders). However, it is unlikely that this GSF Act provision would be used in relation to SOCs, given the powers conferred on the voting shareholders and Portfolio Minister at section 29 of the SOC Act.

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<ul style="list-style-type: none"> Sec 9.4 (Content of requests) Sec 9.5 (Compliance with requests) 			
<ul style="list-style-type: none"> Sec 9.6 (Division does not limit information sharing) 			
<ul style="list-style-type: none"> Sec 9.7 (Delegable functions) Sec 9.9 (Delegations by Ministers) 	PFAA Sec 12A		<ul style="list-style-type: none"> SOCs can use the delegation provisions of the GSF Act, but they do not have to. Where delegations are validly made under other legislative or governance regimes, those delegations can continue to operate. If the SOCs update their delegations manual, they could consider referring to the GSF Act as well for completeness, but it is not necessary.
<ul style="list-style-type: none"> Sec 9.11 (Delegations by accountable authorities) 			<ul style="list-style-type: none"> SOCs can use the delegation provisions of the GSF Act, but they do not have to. Where delegations are validly made under other legislative or governance regimes, those delegations can continue to operate. If the SOCs update their delegations manual, they could consider referring to the GSF Act as well for completeness, but it is not necessary.
<ul style="list-style-type: none"> Division 9.3 (Documents) Division 9.4 (Civil Recovery) 	PFAA Sec 63C PFAA Sec 60 PFAA Sec 61		
Part 10 (Miscellaneous excluding regulations)			
<ul style="list-style-type: none"> Sec 10.1 (Status of Workers Compensation) (1 July 2019) 	PFAA Sec 63F		
<ul style="list-style-type: none"> Sec 10.2 (Exemption from duty under the <i>Duties Act 1997</i>) 	PAFA Sec 38		
<ul style="list-style-type: none"> Sec 10.3 (Reference of matters to Public Accounts Committee) (1 July 2019) 	PFAA Sec 63A ARSB Sec 16 ARD Sec 19		
<ul style="list-style-type: none"> Sec 10.4 (Regulations) 	PFAA Sec 64 ARSB Sec 17 ARD Sec 20 PAFA Sec 43		

An updated table will be circulated to SOCs regarding further provisions commencing on 1 July 2019, before their commencement.

Should you have any questions relating to the above information or the GSF Act, please do not hesitate to contact Legislation@treasury.nsw.gov.au (CC: CommercialPolicy@treasury.nsw.gov.au).

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